

REMARKS

Claims 252 and 265-277 were pending in the present application. Claims 266-277 have been amended. The remarks made herein are designed to place the case in condition for allowance. As such, Applicants respectfully request that the remarks made herein be entered and fully considered.

Rejection of Claims 266-276 Under 35 U.S.C. § 112, ¶2

Claims 266-276 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically:

1) the Examiner states that “The preamble “The antibody of claim 265” in claims 266-271 should have been “The antibody or antigen binding portion of claim 265””. Applicants have amended claims 266-271 as suggested by the Examiner. Applicants have additionally amended claims 272-277 to read “The antibody or antigen binding portion thereof...” in order to be consistent;

2) the Examiner states that “The “antibody is conjugated to a therapeutic or drug moiety” in claim 272 lacks antecedent basis in base claim 265.” The Examiner suggested amending claim 272 to “A conjugated antibody or antigen binding portion thereof of claim 265 wherein the antibody is conjugated to a therapeutic or drug moiety.” Applicants have amended claim 272 as suggested by the Examiner;

3) the Examiner states that ““The antibody of claim 272” in claim 273 should have been “The conjugated antibody of claim 272...””. Applicants have amended claim 273 to read “The conjugated antibody or antigen binding portion thereof of claim 272...” as suggested by the Examiner;

4) the Examiner states that ““The antibody of claim 275” in claim 274 should have been “The conjugated antibody of claim 272...””. Applicants respectfully traverse this rejection as claim 274 is dependent on claim 265 and not claim 275. The Examiner suggests making claim 274 dependent on claim 272, however claim 272 is specific to therapeutic or drug moieties, and not detectable substances. Therefore, claim 274 properly depends on claim 265. Applicants have amended claim 274 to read “A conjugated antibody or antigen binding portion thereof of claim 265...”;

5) the Examiner states that ““The antibody of claim 274” in claim 275 should have been “The conjugated antibody of claim 272...””. Applicants respectfully traverse this rejection as claim 275 is properly dependent on claim 274 as claim 275 lists exemplary detectable substances. Applicants have amended claim 275 to read “The conjugated antibody or antigen binding portion thereof of claim 274...”;

6) the Examiner states that ““A kit comprising an antibody or fragment thereof” in claim 276 has no antecedent basis in base claim 265 or 274.”” Applicants have amended claim 276 to read “A kit comprising the antibody or antigen binding portion thereof of claim 265 or 274 and instructions for use” as suggested by the Examiner.

Applicants therefore respectfully request reconsideration and withdrawal of the foregoing 35 U.S.C. § 112, second paragraph rejection over claims 266-276.

Double Patenting

Claims 252 and 265-277 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 43-66 of co-pending U.S. Patent Application No. 09/829,495 and claims 26-29, 33-47, 53-54, 65-79 and 87-90 of 09/503,387. This rejection is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Therefore, in the event that co-pending U.S. Patent Application No. 09/829,495 or 09/503,387 issue prior to the allowance of the instantly pending claims, and if the claims of the instant application are deemed to be conflicting with the claims of patents issued from either U.S. Patent Application No. 09/829,495 or 09/503,387, Applicants will then file a Terminal Disclaimer.

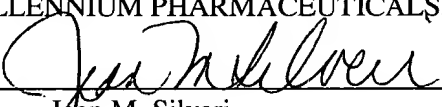
CONCLUSION

In view of the amendments and remarks made herein, Applicants respectfully submit that the objections and rejections presented by the Examiner are now overcome and that this application is now in condition for allowance. Early notice to this effect is solicited.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned.

It is believed that this paper is being filed timely and that a one month extension of time is required. In the event any additional extensions of time are necessary, the undersigned hereby authorizes the requisite fees to be charged to Deposit Account No. 501668.

Entry of the remarks made herein is respectfully requested.

<u>December 9, 2004</u>	<p>MILLENNIUM PHARMACEUTICALS, INC.</p> <p>By </p> <p>Jean M. Silveri Registration No. 39,030 40 Landsdowne Street Cambridge, MA 02139 Telephone - 617-679-7336 Facsimile - 617-551-8820</p>
-------------------------	--